

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: 12/21/92

FAA Order No. 92-73

In the Matter of:

GLENN E. WYATT

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) Docket No. CP91AL0517
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DECISION AND ORDER

Respondent Glenn E. Wyatt has appealed from the written initial decision issued by Administrative Law Judge Burton S. Kolko.^{1/} The law judge found that Respondent performed an annual inspection on an aircraft after revocation of his mechanic certificate and inspection authorization, in violation of Section 43.3(a) of the Federal Aviation Regulations (FAR), 14 C.F.R. § 43.3(a)^{2/} The law judge

^{1/} A copy of the law judge's written initial decision is attached.

^{2/} Section 43.3(a), 14 C.F.R. § 43.3(a) provides in part: "[e]xcept as provided in this section and § 43.17, no person may maintain, rebuild, alter, or perform preventive maintenance on an aircraft, airframe, aircraft engine, propeller, appliance, or component part to which this part applies." The term "maintenance" includes the inspection of aircraft. See Section 1.1, 14 C.F.R. § 1.1.

further found that Respondent failed to surrender his mechanic certificate and inspection authorization for approximately three years after their revocation became effective, in violation of Sections 65.15(c) and 65.92(c), of the FAR, 14 C.F.R. §§ 65.15(c); 65.92(c).^{3/} For the reasons set forth below, the law judge's decision is affirmed.

The facts of this case are not in dispute. On April 6, 1987, the Administrator issued an order revoking Respondent's mechanic certificate and inspection authorization. Respondent appealed the Administrator's order to the National Transportation Safety Board (NTSB). After a hearing, NTSB Administrative Law Judge Patrick G. Geraghty affirmed the Administrator's order of revocation on December 19, 1987. Respondent appealed the law judge's initial decision. On May 31, 1988, the NTSB dismissed the appeal because Respondent had failed to perfect the appeal by filing an appeal brief within the time frame set by 49 C.F.R. § 821.48(a). See Administrator v. Wyatt, NTSB Order No. EA-2727 (May 31, 1988).

On June 3, 1988, Respondent received a copy of the NTSB

^{3/} Section 65.15(c), 14 C.F.R. § 65.15(c) provides: "[t]he holder of a certificate issued under this part that is suspended, revoked, or no longer effective shall return it to the Administrator."

Section 65.92(c), 14 C.F.R. § 65.92(c) provides: "[t]he holder of an inspection authorization that is suspended or revoked shall, upon the Administrator's request, return it to the Administrator."

order dismissing his appeal from the NTSB. On June 21, 1988, the FAA Associate Regional Counsel for the Alaska Region wrote to Respondent requesting that he surrender his mechanic certificate and inspection authorization. On June 25, 1988, Respondent conducted an annual inspection of aircraft N8942N and made an entry to that effect into maintenance records.^{4/}

On three occasions in August and December 1988, FAA personnel from the Alaska Region asked Respondent, in person and by telephone, to surrender his mechanic certificate and inspection authorization. By correspondence dated May 7, 1991, the Regional Administrator of the Alaska Region requested that Respondent surrender his mechanic certificate and inspection authorization. Respondent finally did so on May 13, 1991.

Subsequently, Complainant filed a complaint seeking a civil penalty of \$6,000 from Respondent for performing the annual inspection after revocation of his mechanic certificate and inspection authorization, and for his delay, in surrendering these documents. Respondent requested a hearing. The law judge later granted Complainant's motion for decision and entered judgment in favor of Complainant under

^{4/} The record does not indicate the date on which Respondent received the June 21, 1988, letter from the Associate Regional Counsel. Respondent, nevertheless, performed the annual inspection on aircraft N8942N knowing that the NTSB had dismissed his appeal of the Administrator's order of revocation.

Section 13.218(f)(5), 14 C.F.R. § 13.218(f).^{5/}

The law judge found that Respondent's answers to the complaint and interrogatories, as well as Respondent's failure to answer Complainant's requests for admissions, established the allegations in the complaint.^{6/} The law judge held that Complainant was entitled to judgment as a matter of law. He assessed the \$6,000 civil penalty sought by Complainant after finding that Respondent's inspection of aircraft N8942N, and his failure to surrender the documents, had been deliberate and defiant acts warranting a substantial penalty.

Respondent on appeal argues that he was not required by the Administrator's order of revocation or by the regulations to surrender his mechanic certificate and inspection authorization on any particular date. Respondent's argument is without merit.

The Administrator's order of revocation expressly ordered Respondent to surrender his mechanic certificate and

^{5/} Section 13.218(f)(5), 14 C.F.R. § 13.218(f)(5) provides in part:

The administrative law judge shall grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, matters that the administrative law judge has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law.

^{6/} Respondent never answered Complainant's request for admissions, even after ordered to do so by the law judge in an order served on February 24, 1992. Respondent's failure to answer Complainant's request for admissions was deemed by the law judge to be an admission of the truth of the statements in the request for admissions. See 14 C.F.R. § 13.220(1)(1).

inspection authorization on or before the effective date of the order. The Administrator's order was effective 20 days after its service date. Respondent's appeals to the NTSB law judge and to the Board, however, stayed the effectiveness of the Administrator's order. See Section 609(a) of the Federal Aviation Act of 1958, 49 U.S.C. App. § 1429; Section 821.30(c) of the NTSB Rules of Practice in Air Safety Proceedings, 49 C.F.R. § 821.30(c). After the Board dismissed Respondent's appeal on May 31, 1988, for failure to perfect, the NTSB law judge's prior order affirming the order of revocation became effective immediately. By failing to perfect his appeal, Respondent in effect failed to appeal the NTSB law judge's order affirming the Administrator's order of revocation. Therefore, the Administrator's order to Respondent to surrender his mechanic certificate and inspection authorization became effective upon dismissal of Respondent's NTSB appeal on May 31, 1988.^{7/}

Respondent correctly notes on appeal that Sections 65.15(c) and 65.92(c) of the FAR, 14 C.F.R §§ 65.15(c), 65.92(c), do not specify a date for the surrender of the mechanic certificate and the inspection authorization. Section 65.15(c), 14 C.F.R. § 65.15(c), however, places an affirmative duty on the holder of a mechanic certificate to return it to the Administrator once it is revoked. See

^{7/} Respondent did not file a petition with the NTSB seeking reconsideration of the dismissal of his appeal. The filing of a petition for reconsideration would have operated as a new stay of the order of revocation. See Section 821.50(f), 49 C.F.R. § 821.50(f).

footnote 3. Respondent did not return his revoked mechanic certificate for approximately three years. Respondent does not dispute the law judge's finding that nothing prevented him from surrendering his revoked mechanic certificate and inspection authorization during that time period.

Section 65.92(c), 14 C.F.R. § 65.92(c) requires the holder of an inspection authorization that is revoked, to return it to the Administrator, upon the Administrator's request. See footnote 3. On June 21, 1988, three weeks after the NTSB dismissed Respondent's appeal, the FAA Associate Regional Counsel wrote to Respondent requesting that he surrender his mechanic certificate and inspection authorization.

The regulations pertaining to the surrender of a suspended or revoked certificate or authorization do not specify how long a certificate holder has before he must surrender the certificate or authorization. The only reasonable interpretation of these regulations is that the certificate or authorization must be surrendered by the effective date of the suspension or revocation order. An airman cannot unilaterally decide when he will surrender his certificate or authorization after it has been suspended or revoked. Certainly, it should have been apparent to Respondent that he could not hold the certificate and authorization for three years after the effective date of the order of revocation.

Respondent argues that the request by the FAA Associate Regional Counsel for the return of the documents was invalid because it cited the wrong section of the regulations. After reviewing the procedural history of Respondent's case, the

Associate Regional Counsel's request stated:

In view of the foregoing, you are now required by Judge Geraghty's Order, the Order of Revocation, and Section 61.19(f) of the Federal Aviation Regulations to surrender your Mechanic Certificate and Inspection Authorization to the Federal Aviation Administration.

Although the Associate Regional Counsel's request cited the wrong section of the FAR,^{8/} such error was harmless and not grounds for ignoring the plain meaning of the letter.

Furthermore, the Associate Regional Counsel's request to Respondent to surrender the documents did not have to cite regulatory authority. The Administrator's order of revocation, as affirmed by the NTSB, was sufficient legal authority for requesting the surrender of the documents.

Respondent cites the final paragraph of the Administrator's order of revocation for the proposition that the order did not become effective until Respondent surrendered the mechanic certificate and inspection authorization to the FAA.^{9/} The law judge correctly rejected this argument, noting that:

[t]his extraordinary claim results from a tortured and unreasonable interpretation of the Administrator's language in the order. To permit the holder of the documents to, in effect, determine the length of their effectiveness, would render the order and all proceedings before it, a nullity. The order plainly took effect upon issuance.

^{8/} The Associate Regional Counsel's letter cited Section 61.19(f) of the FAR, 14 C.F.R. § 61.19(f), which refers to the return of revoked pilot and flight instructor certificates.

^{9/} The final paragraph of the order of revocation provided: "[i]f you fail to surrender your mechanic certificate and inspection authorization as above ordered, the effectiveness

(Footnote 9 continued on next page.)

Respondent's related argument that his mechanic certificate and inspection authorization were in effect when he inspected aircraft N8942N because the inspection preceeded the surrender of the documents must also be rejected. Respondent incorrectly cites Administrator v. Metro Air System, 2 NTSB 285 (1973) as support for his contention that his possession of the mechanic certificate and inspection authorization conferred upon him the authority to conduct the inspection.^{10/}

Respondent also argues on appeal that Complainant violated FAA Order 2150.3A, the FAA Compliance and Enforcement Program, (1988) by commencing the civil penalty action without attempting to counsel or educate him in order to achieve voluntary compliance. The application of discretionary agency policies, such as those alluded to by Respondent, is not relevant to whether Respondent violated the regulations as alleged in the complaint.^{11/} See In the Matter of American

(Footnote 9 continued from previous page.)

of this Order shall be extended for a period commensurate with the actual date of surrender of the mechanic certificate and inspection authorization to the Federal Aviation Administration."

^{10/} In Administrator v. Metro Air System, the NTSB held that a Part 135 operator's failure to surrender its air taxi/commercial operator certificate after emergency revocation did not affect the effective date of revocation. The NTSB held further that the holder's failure to surrender the certificate subjected it to a separate regulatory violation.

^{11/} The same conclusion applies to Respondent's arguments on appeal concerning alleged "violations" by FAA inspectors of FAA internal policies found in other FAA orders and in public comments by previous Administrators.

Airlines, Inc., FAA Order No. 89-6, at 7 (December 21, 1988). Furthermore, Complainant's decision whether or not to commence a civil penalty action against Respondent was an exercise of prosecutorial discretion. The decision to prosecute is generally committed to the agency's absolute discretion and should be presumed immune from review. In the Matter of [Airport Operator], FAA Order No. 91-41 at 7 (October 31, 1991). Finally, Complainant's actions were not contrary to the sections of FAA Order 2150.3A cited by Respondent. Complainant made numerous requests for the surrender of the certificate and authorization before initiating the civil penalty action.

Respondent's remaining arguments on appeal are unavailing. The law judge's granting of Complainant's motion for decision did not deprive Respondent of due process of law, including the right to cross-examine Complainant's witnesses. A motion for decision under Section 13.218(f)(5), 14 C.F.R. § 13.218(f)(5), see footnote 5, is appropriate when, as in this case, there were no genuine issues of material fact, and only the law remained to be applied. The law judge's mistaken reference in his written initial decision to Complainant's "motion to dismiss" instead of to Complainant's "motion for decision" was harmless error, with no prejudicial effect on Respondent's case. It was within the law judge's discretion to reject what he found were unsupported arguments by Respondent, without specifically addressing all of them in his written initial decision.

The law judge did not err in denying Respondent's motion

to dismiss the complaint for failing to meet the 2-year limitations period under Section 13.208(d), 14 C.F.R § 13.208(d).^{12/} Under this regulation, a notice of proposed civil penalty must be filed within two years of the alleged violation, if the alleged violation occurred on or after August 2, 1990. A prior limitations period of 5 years applies to alleged violations that occurred before August 2, 1990. See 28 U.S.C. § 2462; 54 Fed. Reg. 119114, 11919 (1989); 55 Fed. Reg. 15134, 15135-15136 (1990); 55 Fed. Reg. 27548, 27552-53 (1990).

Each day that Respondent failed to surrender his revoked mechanic certificate and inspection authorization was a separate violation of the regulations. Respondent failed to surrender his mechanic certificate and inspection authorization from August 2, 1990, until May 1991. The notice of proposed civil penalty was issued in June 1991, within 2 years of those violations.


Complainant met the 5-year limitations period with respect to the June 1988 inspection and Respondent's failure to surrender the revoked documents from June 1988 until August 1, 1990. These violations occurred less than 5 years from the issuance of the notice of proposed civil penalty of June 1991.

^{12/} Section 13.208(d), 14 C.F.R. § 13.208(d), provides: "[i]nstead of filing an answer to the complaint, a respondent may move to dismiss the complaint, or that part of the complaint, alleging a violation that occurred on or after August 2, 1990, and more than 2 years before an agency attorney issued a notice of proposed civil penalty to the respondent."

Respondent does not appeal the amount of the civil penalty assessed by the law judge. Respondent does not claim on appeal that financial hardship or inability to pay should mitigate the amount of civil penalty assessed. Respondent stated in his answers to Complainant's interrogatories that he was not pleading financial hardship.

The record supports the law judge's finding that Respondent's inspection of aircraft N8942N, and his failure to surrender his revoked mechanic certificate and inspection authorization for approximately three years, were deliberate acts. Deliberate non-compliance warrants a substantial penalty. Revoked certificates and inspection authorizations must be returned to the FAA in a timely manner to insure that they are not used after revocation.

A civil penalty of \$6,000 is assessed.^{13/}


THOMAS C. RICHARDS, ADMINISTRATOR
Federal Aviation Administration

Issued this 17th day of December, 1992.

^{13/} Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. App. § 1486), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1992).